

MEMORANDUM ENDORSED

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DOC #:
DATE FILED: 11/14/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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United States of America, and States of the
United States, *ex rel.* Patrick Donohue,

Plaintiffs,

Case No. 20-cv-05396 (GHW)(SDA)

-against-

RICHARD CARRANZA, in his official capacity
as the former Chancellor of New York City
Department of Education, *et al.*

**NOTICE AND STIPULATION
OF VOLUNTARY DISMISSAL**

Defendants.

-----X

Plaintiff-Relator, PATRICK DONOHUE (“Plaintiff-Relator”), by and through his undersigned counsel and pursuant to 31 U.S.C. § 3730(b)(1), hereby moves this Court for an Order dismissing all claims in the above captioned matter against the Defendants LAMONT A. JACKSON, in his official capacity as Superintendent (“Jackson”), CINDY MARTEN, in her official capacity as former Superintendent (“Marten”), and the SAN DIEGO UNIFIED SCHOOL DISTRICT (“SDUSD”) (Jackson, Marten, and SDUSD collectively the “San Diego Defendants”), as set forth below. Plaintiff-Relator and the San Diego Defendants are collectively the “Parties.”

Plaintiff-Relator requests voluntary dismissal of all of Plaintiff-Relator’s claims against the San Diego Defendants. Pursuant to this Court’s Order of September 19, 2022 [ECF Nos. 5, 191], Plaintiff-Relator sought and received the written consent of the United States and the California Attorney General to voluntarily dismiss the claims specified herein. [See, ECF No. 194; Exhibit No. 1.]

San Diego Defendants by and through their undersigned counsel hereby join in this motion.

The Parties agree and acknowledge that voluntary dismissal of Plaintiff-Relator’s claims under the federal False Claims Act (31 U.S.C. §§ 3729 *et seq.*) and the California False Claims

Act (Cal. Gov. Code, §§ 12650 *et seq.*) in the above-captioned action is subject to approval by this Court and the respective United States and California Attorneys General pursuant to this Court's Order of March 3, 2021 [ECF No. 5], 31 U.S.C. § 3730(b)(1) and California Government Code section 12652(c)(1). Pursuant to this Court's Order of September 19, 2022 [ECF No. 191] and as set forth in the letter dated September 26, 2022 from Plaintiff-Relator to this Court [ECF No. 194], Plaintiff-Relator sought and received the written consent of the United States and the United States Attorney to the voluntary dismissal of Plaintiff-Relator's claims under the federal False Claims Act, WITHOUT PREJUDICE, as to any claims against the San Diego Defendants, and received the written consent of the California Attorneys General to voluntarily dismiss the California State Law claims brought by Plaintiff-Relator against San Diego Defendants in the above-captioned action.

Accordingly, the Parties hereby respectfully request that this Court approve the voluntary dismissal of the above-captioned action as brought by Plaintiff-Relator against San Diego Defendants, WITH PREJUDICE; provided, however, that, with respect to the voluntary dismissal of the federal False Claims Act claims against the San Diego Defendants, the dismissal shall be WITHOUT PREJUDICE as to the United States.

Date: October 31, 2022
New York, New York

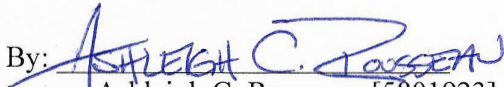
Brain Injury Rights Group, Ltd.

Attorneys for Relator
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New York, New York 10128
Tel: 646-850-5035
Fax: 212-504-9532
Rory@pabilaw.org
Ashleigh@pabilaw.org


Orbach, Huff, & Henderson, LLP

Attorneys for San Diego Unified Sch. Dist.
2877 Historic Decatur Road, Suite 200
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Tel: 858-988-4188
wantrim@ohhlegal.com

By:


Ashleigh C. Rousseau [5801923]
Rory J. Bellantoni [RB 2901]

By:


Whitney N. Antrim, Esq.

Plaintiff-Relator, Patrick Donohue, and Defendants LA Jackson, Cindy Marten, and the San Diego Unified School District have stipulated to the dismissal of Plaintiff's claims with prejudice against Defendants LA Jackson, Cindy Marten, and the San Diego Unified School District, except that Plaintiff-Relator's claims under the False Claims Act shall be dismissed without prejudice as to the United States.

The Clerk of Court is directed to remove Defendants LA Jackson, Cindy Marten, and the San Diego Unified School District from the caption of this case.

SO ORDERED.

Dated: November 14, 2022

New York, New York

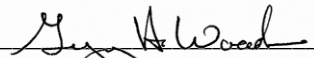

GREGORY H. WOODS
United States District Judge

Exhibit 1



Ashleigh Rousseau <ashleigh@pabilaw.org>

U.S. ex rel. Donahue v. Carranza

20 messages

Rachel Coles <Rachel.Coles@doj.ca.gov>
To: "ashleigh@pabilaw.org" <ashleigh@pabilaw.org>

Tue, Sep 6, 2022 at 12:39 PM

Hello Ashleigh,

I'm following up on my email from last month.

I am the assigned attorney for California for the *Donohue* matter.

I've been monitoring the docket, and I have spoken with Whitney Antrim and Joe Willey about the proposed dismissals.

I am out of the office for the next few days, but should be able to have to a call later in the week if you'd like to discuss.

Best regards,

Rachel Coles (she/her)

Deputy Attorney General

California Attorney General's Office

1300 "I" Street

Sacramento, CA 95814

530-400-8839

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Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>
Bcc: David Markese <david@pabilaw.org>

Tue, Sep 6, 2022 at 3:54 PM

+Rory

Hi Rachel,

I'm adding Rory Bellantoni, the other attorney on this case, to this email thread. We can definitely set up a call for the end of the week. Or, if you'd prefer, our office can work on drafting a Stip for you to review upon your return to the office.

Kindly let us know!

Thank you,

Ashleigh

[Quoted text hidden]

Rachel Coles <Rachel.Coles@doj.ca.gov>
To: Ashleigh Rousseau <ashleigh@pabilaw.org>
Cc: Rory Bellantoni <rory@pabilaw.org>

Wed, Sep 7, 2022 at 12:11 PM

Sending me a draft stipulation would be helpful.

Thanks.

From: Ashleigh Rousseau <ashleigh@pabilaw.org>
Sent: Tuesday, September 6, 2022 12:55 PM
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>
Subject: Re: U.S. ex rel. Donahue v. Carranza

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

[Quoted text hidden]

[Quoted text hidden]

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>

Thu, Sep 22, 2022 at 3:57 PM

Hi Rachel,

I know we previously spoke about a Stipulation--I went back to the Docket and the Judge had asked us to contact the Attorney Generals and get permission or a letter allowing us to voluntarily dismiss the claims against LA and the LA superintendents. Plaintiffs are to update the Court on Monday as to the progress with the Attorney Generals. While we figure out what documentation we would need to submit, I just want to make sure that your office does not want to join the litigation and are okay with voluntarily dismissing the LA Defendants so the Plaintiffs may provide an accurate update for the Court.

Kindly let us know!

Thank you,

Ashleigh Rousseau

[Quoted text hidden]

Rachel Coles <Rachel.Coles@doj.ca.gov>
To: Ashleigh Rousseau <ashleigh@pabilaw.org>

Fri, Sep 23, 2022 at 4:25 PM

Cc: Rory Bellantoni <rory@pabilaw.org>


Hi Ashleigh,

My understanding from your firm's August 23 letter to the court was that the San Diego Defendants were also going to be dismissed.

Is that still the case?

[Quoted text hidden]

[Quoted text hidden]

 Letter from Donahue Aug 23 2022.pdf
264K

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: David Markese <david@pabilaw.org>

Fri, Sep 23, 2022 at 4:54 PM

[Redacted]


[Redacted]

[Redacted]

Thank you,

Ashleigh

[Quoted text hidden]

 Letter from Donahue Aug 23 2022.pdf
264K

David Markese <david@pabilaw.org>
To: Ashleigh Rousseau <ashleigh@pabilaw.org>

Fri, Sep 23, 2022 at 5:21 PM

[Redacted]

[Quoted text hidden]

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>
Bcc: David Markese <david@pabilaw.org>

Fri, Sep 23, 2022 at 5:22 PM

Good afternoon Rachel,

Yes, that is correct. After our office received the case, research showed that in California for qui tam Medicaid claims, school districts are not recognized as "persons" as defined by the statute. Accordingly, we are trying to dismiss San Diego and Los Angeles Defendants.

Thank you,

Ashleigh Rousseau

[Quoted text hidden]

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: David Markese <david@pabilaw.org>

Fri, Sep 23, 2022 at 5:22 PM

Thank you! Just sent it off

[Quoted text hidden]

Rachel Coles <Rachel.Coles@doj.ca.gov>
To: Ashleigh Rousseau <ashleigh@pabilaw.org>
Cc: Rory Bellantoni <rory@pabilaw.org>

Sun, Sep 25, 2022 at 7:59 PM

Thank you.

You may represent to the court that the California Attorney General's Office has provided its written consent for relator to dismiss the San Diego and Los Angeles defendants.

Best regards,

Rachel Coles

[Quoted text hidden]

[Quoted text hidden]

Rachel Coles <Rachel.Coles@doj.ca.gov>
To: Ashleigh Rousseau <ashleigh@pabilaw.org>
Cc: Rory Bellantoni <rory@pabilaw.org>

Mon, Sep 26, 2022 at 1:28 PM

Ashleigh –

A few more things: could you please copy me on the correspondence that you send to the court today?

Also, when I can expect to see a draft stipulation?

Thank you.

[Quoted text hidden]

[Quoted text hidden]

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>

Mon, Sep 26, 2022 at 2:55 PM

Hi Rachel,

I will absolutely forward you a copy of the letter. Our office is working on finalizing it at the moment. I'm working with the Senior Attorneys to figure out what kind of document, if any, is needed in addition to the consent. Usually, the stipulation would be between the parties, and I'm not sure if the AG becomes a party by virtue of the nature of the action. The Court

only asked us to get consent from the respective Attorney Generals in order for the Plaintiff to enter into a stipulation of voluntary dismissal, so I'll keep you posted on whether the Court requires more than just consent.

Thank you again for your help!

Best,

Ashleigh

[Quoted text hidden]

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>

Mon, Sep 26, 2022 at 10:16 PM

Hi Rachel,

Please find the filed letter attached. Apologies for the delay--I got caught up on another assignment.

Thank you,

Ashleigh

[Quoted text hidden]

 **Date Stamped Correspondence to Court 9.26.22.pdf**
305K

Rachel Coles <Rachel.Coles@doj.ca.gov>
To: Ashleigh Rousseau <ashleigh@pabilaw.org>
Cc: Rory Bellantoni <rory@pabilaw.org>

Wed, Oct 19, 2022 at 1:55 PM

Hi Ashleigh,

Can you send me a draft of the dismissal before filing?

[Quoted text hidden]

[Quoted text hidden]

 **Donohue correspondence Oct 17 2022.pdf**
282K

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>

Wed, Oct 19, 2022 at 2:22 PM

Hi Rachel,

Not a problem. Would you like a draft to review or would you like me to add a block for your signature as well for your office to sign off on?

Kindly let us know and I'll get a draft over to you!

Thank you,

Ashleigh Rousseau

[Quoted text hidden]

Rachel Coles <Rachel.Coles@doj.ca.gov>

Wed, Oct 19, 2022 at 2:24 PM

To: Ashleigh Rousseau <ashleigh@pabilaw.org>
Cc: Rory Bellantoni <rory@pabilaw.org>

Just a draft for now; I don't anticipate that we will be signing. I'll loop back after I get a chance to look at it.

[Quoted text hidden]

[Quoted text hidden]

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>

Thu, Oct 27, 2022 at 5:51 PM

Hi Rachel,

The San Diego Defendants are proposing the following stipulation. Kindly review and let us know your thoughts. We can revise and send it back to them if needed.

Thank you,

Ashleigh

[Quoted text hidden]

 **for circulation Stip of Voluntary Dismissal_San Diego (002) (ID 8337375).docx**
20K

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>

Fri, Oct 28, 2022 at 11:01 AM

Good morning Rachel,

Sorry for the duplicate emails. Ms. Antrim, counsel for the San Diego Defendants, just circulated an updated version of their proposed stipulation. Kindly review and let us know your thoughts.

Thank you,

Ashleigh

[Quoted text hidden]

 **for circulation Stip of Voluntary Dismissal_San Diego (002) (ID 8337375) (1).docx**
21K

Rachel Coles <Rachel.Coles@doj.ca.gov>
To: Ashleigh Rousseau <ashleigh@pabilaw.org>
Cc: Rory Bellantoni <rory@pabilaw.org>

Mon, Oct 31, 2022 at 11:33 AM

This is fine.

[Quoted text hidden]

[Quoted text hidden]

Ashleigh Rousseau <ashleigh@pabilaw.org>
To: Rachel Coles <Rachel.Coles@doj.ca.gov>
Cc: Rory Bellantoni <rory@pabilaw.org>

Mon, Oct 31, 2022 at 12:25 PM

Thank you, Rachel!

[Quoted text hidden]